Minnesota Rate Cases, 230 U. S. 352, 415–416, 33 Sup. Ct. 729, 747. The court further says that the rules would be unconstitutional even if applied only to intrastate traffic. But it has been decided that a state can regulate the rates of interstate carriers as to intrastate traffic. *Minnesota Rate Cases, supra.* And it is submitted that the slight holding up of interstate cars that might result from the longer time allowed by the state demurrage rules would be a less material interference with interstate commerce than the regulation of intrastate rates. The court in the principal case curiously relies on one of the federal court decisions (*Shepard* v. *Northern Pacific R. Co.*, 184 Fed. 765), which was reversed by the Supreme Court in the *Minnesota Rate Cases*. Assuming that the rules in question would be constitutional if applied solely to intrastate traffic, the question presents itself, whether the rules can be separated and upheld as to the constitutional part. This problem of splitting a statute seems to depend on whether it can reasonably be assumed that the legislature would have preferred the statute to be partially effective rather than entirely null. See *The Employers' Liability Cases*, 207 U. S. 463, 501. Whether we attribute to the Commission in the principal case a desire to bear down on the railroads or to benefit the people of the state, it can reasonably be presumed that a partially effective statute would have been preferred to one void *in toto*. If this is so, it would seem that the statement of the court as to intrastate traffic is not a mere *dictum* but a holding *contra* to the *Minnesota Rate Cases*. (For a discussion of those cases, see article, 27 HARV. L. REV. 1.) If the Wisconsin court's holding that the entire statute is unconstitutional is erroneous, nevertheless it is not open to review by the United States Supreme Court for the reason that there is no denial of any federal right claimed by the defeated litigant.

LIBEL AND SLANDER — PLEADING AND PROOF — APPLICATION TO PLAINTIFF. — The defendant, a physician, told of an experience in his practice with a young woman. He named no one and did not mean the plaintiff. The plaintiff, however, proved that people thought the story was about her. *Held*, that the defendant is entitled to a peremptory instruction. *Newton* v. *Grubbs*, 159 S. W. 994 (Ky.).

In the principal case no name was mentioned. It is, however, a sufficient description of the plaintiff if the hearers reasonably suppose that the plaintiff is referred to. *Hird* v. *Wood*, 38 Sol. J. 234; *Le Fanu* v. *Malcolmson*, 1 H. L. C. 636. But the court regards intention on the part of the defendant as necessary, interpreting too literally the requirement that the words be "published of and concerning the plaintiff." *Hanson* v. *Globe Newspaper Co.*, 159 Mass. 293, 34 N. E. 462. But this requirement, on logic and authority, only means that the jury must find that reasonable hearers under the circumstances would so understand the words. Intent to refer to the particular plaintiff is not necessary. *Taylor* v. *Hearst*, 107 Cal. 262, 40 Pac. 392; *Farley* v. *Evening Chronicle Pub. Co.*, 113 Mo. App. 216, 87 S. W. 565. Any doctrine of non-liability for negligent use of language refers to the action of deceit, not to defamation. Defamation is an action at peril. *Peck* v. *Tribune Co.*, 214 U. S. 185, 29 Sup. Ct. 554. The law seems to have reached the stage where those who utter defamatory statements that may reasonably be applied to some innocent person must stand the consequences if that person is injured thereby.

LIBEL AND SLANDER — REPETITION — LIABILITY FOR PRIVILEGED REPETITION. — The defendant told the father of the plaintiff's fiancée that the plaintiff was already married. The father repeated this to his daughter, whereby the marriage was delayed until the charge was disproved. *Held*, that the defendant is liable for the repetition. *Bordeaux* v. *Joles*, 25 West. L. R. 894 (Sup. Ct. of Alberta).

The general rule is that there is no liability for the repetition by others of

defamation. *Ward* v. *Weeks*, 7 Bing. 211; *Hastings* v. *Stetson*, 126 Mass. 329. As a matter of law, the damages due to repetition are held to be too remote, though it is common experience that the repetition of slander is in fact a most natural and probable consequence of the publication of it. *Hastings* v. *Stetson*, *supra*. This proceeds upon the unsound and, in this country, discredited doctrine, that in questions of legal cause responsibility for an act does not extend beyond the last wrongdoer. See *Elmer* v. *Fessenden*, 151 Mass. 359, 362; see also 25 HARV. L. REV. 111–113, 119–122. But an exception to this non-liability exists where the repetition is privileged, the person hearing the charge being under a legal or moral obligation to repeat it. *Derry* v. *Handley*, 16 L. T. N. S. 263. The reason generally assigned is that the person repeating the charge is here not a wrongdoer, and that the originator is the last wrongdoer. See *Elmer* v. *Fessenden*, *supra*. A more practical reason is that unless the plaintiff were given recovery against the originator of the slander, he would be remediless. See *Bassell* v. *Elmore*, 48 N. Y. 561, 564. Even on the reasoning of the general rule this exception is justified, for the repetition is obviously a more natural consequence when the party repeating the charge is under a duty to do so, than in the ordinary case of repetition. Moreover, the exception is particularly desirable, since it limits an archaic rule of causation.

MARRIAGE — VALIDITY — COMMON-LAW MARRIAGE. — The defendant married X. in New York. At the time of this marriage X. had a husband from whom she had been divorced in California, but which divorce was invalid in New York. The parties then moved to Illinois where the California divorce decree was valid, and there cohabited together. The defendant subsequently deserted X. and contracted another marriage. The defense to an indictment for bigamy was that the defendant and X. were not man and wife in Illinois. *Held*, that the defendant is not guilty of bigamy. *People* v. *Shaw*, 102 N. E. 1031 (Ill.).

For a discussion of the requisites of common-law marriage, see NOTES, p. 378.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — INJURY OCCURRING "IN THE COURSE OF" AND ARISING "OUT OF" EMPLOYMENT. — The plaintiff, employed as a night watchman in the defendant's train yard, received permission to go for his clothes to a portion of the premises outside the part where his duties were performed. While returning to the part of the premises where he carried on his work he was injured by one of the defendant's engines. *Held*, that the plaintiff is entitled to compensation. *Gonyea* v. *C. N. Ry. Co.*, *Canadian*, 26 West. L. R. 57 (Sup. Ct. Saskatchewan).

The Canadian statute follows the English act and requires both that the injury occur "in the course of" and that it arise "out of" the employment. STAT. 6 ED. VII, c. 58, § 1, subsec. (1). The same phrasing is found in seventeen of the twenty-two acts now adopted in the United States. An accident arises "out of" the employment when it results from a risk incidental to the employment, as distinguished from a risk common to all mankind. *Pierce* v. *Provident, etc. Co.*, [1911] 1 K. B. 997; *In re Employers' Liability, etc. Corp.*, 102 N. E. 697 (Mass.). The accident in question seems to fall within this definition. Whether it is within the course of the employment has been said to depend upon the geographical test of whether the workman is upon the premises where the work is being carried on, and whether his presence there is incidental to his work. See 25 HARV. L. REV. 401, 406. The court points out that in this case the plaintiff was clearly beyond the ambit of his employment. A broader definition and the one adopted by the court is whether the plaintiff was injured while doing what a man so employed might reasonably do within the time he is employed. *Moore* v. *Manchester Liners*, [1910] A. C. 498, 500; *Bryant* v. *Fissell*, 86 Atl. 458 (N. J.). Either test has the desirable feature of being